

<b>EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> UI Performs
	<b>CORRESPONDENCE SYMBOL</b> OWS/DPM
	<b>DATE</b> February 18, 2005

**ADVISORY:** UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 14-05

**TO:** STATE WORKFORCE AGENCIES

/s/

**FROM:** CHERYL ATKINSON  
Administrator  
Office of Workforce Security

**SUBJECT:** Changes to UI Performs

1. **Purpose.** To inform State Workforce Agencies (SWAs) of changes made to the unemployment insurance (UI) performance management system “UI Performs” as a result of a five-year review; to convey a summary of the comments received in response to the Federal Register Notice (FRN) containing Unemployment Insurance Program Letter (UIPL) 21-04 “Proposed Changes to UI Performs”; and to provide effective dates for implementing changes.

2. **References.** Federal Unemployment Tax Act; Title III of the Social Security Act; 20 Code of Federal Regulations (CFR) parts 640 (Standard for Benefit Payment Promptness) and 650 (Standard for Appeals Promptness); 69 Fed. Reg. 33669 (2004); Employment and Training (ET) Handbook No. 336, 17<sup>th</sup> Edition, “Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines” (June 18, 2002); ET Handbook No. 401, 3<sup>rd</sup> Edition, “Unemployment Insurance Reports Handbook” and subsequent changes; Unemployment Insurance Program Letter (UIPL) 41-95, “Draft Narrative Describing the System for Enhancing Unemployment Insurance (UI) Performance: The ‘UI Performs’ System” (August 24, 1995); UIPL 37-99, “UI Performs Tier I and Tier II Performance Measures, and Minimum Performance Criteria for Tier I Measures” (July 31, 1999); UIPL 06-03, “Review of UI Performs” (November 25, 2002); UIPL No. 21-04, “Proposed Changes to UI Performs” (May 18, 2004); and UIPL 29-04, “Study of the Measure of Nonmonetary Determination Quality” (July 20, 2004).

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> February 18, 2007
----------------------------	---

3. **Background.** In December 2002, the Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL) began a review of UI Performs, the performance management system for the UI program. The review addressed: (a) the performance measures; (b) the criteria used to gauge success against the measures; and (c) the administration of UI Performs. The review included substantial consultation directly with SWAs and indirectly through the National Association of State Workforce Agencies' (NASWA) Subcommittee for UI Performs. Mathematica Policy Research, Inc., provided data analyses.

Two overarching themes emerged during the review: (1) the large number of measures to which the SWAs are held accountable diffuses management attention and (2) the administration of UI Performs is too complex and burdensome on the SWAs. The review resulted in a DOL proposal to streamline UI Performs in three ways:

- a) *Reduce the number of measures for which performance goals are set to a few "core" measures.*
- b) *Recognize remaining measures as management information for which no performance goals will be set.*
- c) *Streamline the State Quality Service Plan (SQSP) narrative.*

The proposed changes were issued for state comment in UIPL No. 21-04, "Proposed Changes to UI Performs," and in 69 Fed. Reg. 33669 (2004), which published the UIPL for public comment.

4. **Highlights of Comments.** The American Federation of Labor - Congress of Industrial Organizations (AFL-CIO), the National Employment Law Project (NELP) and 34 SWAs responded to DOL's request for comments to the proposed changes to UI Performs. Both the AFL-CIO and NELP expressed general concern that the proposed changes would adversely affect unemployed workers and provided comments on specific changes. Although comments from all commentators about specific areas of the proposed changes were mixed, SWA comments were generally favorable to the overall proposed streamlining efforts.

The proposed changes that generated the most comments are discussed briefly below along with DOL's responses to them. See Attachment D, Parts 1 and 2, for specific comments and DOL's responses. All comments were taken into account in making the final changes to UI Performs.

***Number of Measures.*** Comments from SWAs were very favorable regarding the proposal to reduce the number of measures to which they would be held accountable. NELP and the AFL-CIO, on the other hand, expressed concern that the changes would erode the "safety net" that UI provides to unemployed workers.

DOL Response: DOL believes that reducing the number of measures to Core Measures will promote the SWAs' focus on the most critical program areas. All performance measures not designated as "core" will be available to State and Federal partners as management information and will continue to be monitored as a means to alert both Federal and State staff of potential problems.

***Administration of Measures.***

Compliance. In its comments, NELP expressed concern that the changes in the timeliness measures will not help resolve the problem of noncompliance that has been demonstrated by some SWAs. NELP points out that regulations at 20 CFR Section 640.8 outline a number of steps that can be taken by DOL to address performance issues.

DOL Response: DOL follows these steps as appropriate and constantly monitors SWAs' performance.

Effective Dates. Several SWAs asked that the changes not be put into effect when their performance year is already underway because they felt that could reduce their ability to perform to new standards. The SQSP for the 2005 fiscal year has been submitted, and the performance year for 2005-2006 has already begun.

DOL Response: DOL agrees that the cycle of the UI Performs management system requires planning ahead, and the implementation of the changes in the measures should be done in a systematic way so that the state partners know in advance what will be expected of them. Therefore, although the data used in the first payment aggregate measure and the new tax quality measure are currently available, SWAs will not be expected to prepare Corrective Action Plans (CAPs) in the fiscal year (FY) 2006 SQSP for failure to meet the Acceptable Levels of Performance (ALPs). Rather, SWAs must assure DOL that they acknowledge the need to meet the ALPs during the next SQSP period. See Section 8 of this UIPL for effective dates for implementing changes.

***Tax Measures.*** The Tax Performance System (TPS) has been operating as a series of 13 sample measures performed annually, and combining the sample reviews into a single Core Measure is a new concept. All of the TPS measures except two, New Employer Status Determinations Timeliness and Quality, have been operating as "Tier II" measures. Consequently, comments were mixed—about half of the comments were supportive and the others expressed varying concerns. Several of the comments centered on concerns about the stringency of the measure.

DOL Response: DOL considers the new measure a good indicator of overall tax quality. There was a strong feeling among some of the NASWA Subcommittee members that the Tier 1 measure of new employer status determination alone was not a sufficient measure of overall tax quality. As a result, a workgroup of NASWA UI Performs Subcommittee members and DOL staff recommended the new tax quality measure, which consists of the combined results of all the TPS sample reviews. To meet the acceptable level of performance for tax quality, a state can have no more than 3 failures out of the 13 tax functions reviewed under TPS in a year nor any single tax function failing the TPS review for three consecutive years. This level of stringency, as one state pointed out, equates to about a 75% passing rate. SWAs that do not meet this minimum level of performance will be expected to submit CAPs for improvement. The criterion for New Employer Status Determinations Timeliness will be raised from 60% to 70% completed within 90 days of the quarter ending date.

SWAs that do not meet the ALP in calendar year 2004 will acknowledge the need for improvement in the 2006 SQSP narrative.

***Benefits Measures.***

First Payment Timeliness. Comments from SWAs were generally supportive of the aggregate first payment timeliness measure; however, a few SWAs commented that the time required for processing interstate and federal military and civilian claims will cause them to have difficulty meeting the criterion. NELP and the AFL-CIO viewed the change as a weakening of the first payment standard because the SWAs would no longer be held accountable for performance at multiple intervals.

DOL Response: The Core Measure, which was formerly a Tier 1 measure, is a comprehensive measure that includes intrastate and interstate UI as well as UCFE and UCX for both full and partial weeks. Only Workshare programs, episodic claims such as Disaster Unemployment Assistance (DUA), Extended Benefits (EB), Trade Readjustment Allowances (TRA), and retroactive payments for a compensable waiting period are excluded from the measure.

The Core Measure for first payment criterion of 87% applies to the aggregate of all first payments including interstate, UCFE and UCX claims; the criterion of 87% for the current standard applies only to intrastate claims for regular UI. Even with the added claims types, advances in automation and much quicker access to wage data make it likely that SWAs will be able to meet or exceed the criterion.

DOL plans to issue a notice of proposed rulemaking that would amend the current regulations in 20 CFR part 640 to reflect the Core Measure; however, the current regulatory measures and criteria will remain in effect unless and until regulations are amended.

Nonmonetary Determinations Timeliness. Most SWAs and NELP expressed concerns about the proposed change to the nonmonetary determinations time lapse parameters from the issue detection date to the week-ending date of the first week affected by the determination. Most of the SWA comments indicated that issue detection date is the better date because it marks the time at which the SWA has control of disposal of the issue. Comments also expressed concern that using the “first week affected” date could seemingly penalize SWAs that have liberal claims backdating policies.

DOL Response: DOL proposed changing the starting date of the measure to the week-ending date of the first week affected because SWAs have consistently been unable to accurately report the issue detection date. Validation of both data points, accomplished through reviews of sampled nonmonetary determinations, indicate that SWAs generally have better success in reporting the “first week affected,” also a pertinent date from the customer (UI claimants and employers) perspective. However, DOL agrees that issue detection date is a good measurement parameter from an administrative perspective and will defer the decision to change the reporting parameters until an analysis can be conducted to determine whether reporting of issue detection date can be substantially improved. DOL expects to conduct the analysis over the course of the next performance

year, which begins April 1, 2005, and ends March 31, 2006. Until then, the existing measure remains in place.

Nonmonetary Determinations Quality. A number of SWAs commented about nonmonetary determination quality, particularly expressing concerns about the scoring system.

DOL Response: As part of the UI Performs five-year review, DOL convened a federal/state workgroup of nonmonetary determination experts to study and recommend changes to the Benefits Timeliness and Quality (BTQ) Nonmonetary Determinations Quality Review. The workgroup reviewed the data collection instrument and the instructions used in the quality review of nonmonetary determinations, operational guidance that DOL gives the SWAs regarding claim determination requirements, and other matters concerning the adjudication process. Particular effort went toward exploring ways to refine the measurement instrument, how determinations are scored, and instructions to the reviewers to ensure consistent and accurate review results. The workgroup's recommendations were issued for comment in UIPL No. 29-04, "Study of the Measure of Nonmonetary Determination Quality." Comments about the scoring method received in response to UIPL No. 21-04 will be considered along with comments received in response to UIPL No. 29-04 in making decisions for changes to the BTQ Nonmonetary Determination Quality Review.

Overpayment Detection Measure. The AFL-CIO, NELP and SWAs commented on the proposed overpayment detection measure. The AFL-CIO and NELP generally think the focus on UI overpayments should be balanced with attention to UI underpayments and unpaid/underpaid employer taxes. SWA comments were mixed.

DOL Response: DOL believes that overpayment prevention and detection are central to good UI administration and has made reducing overpayments a priority. DOL is currently scrutinizing the measurement data - and, in some cases, methods used to create the data - to assure data quality. Because this is a new measure, DOL will assess the data for a year and explore possible adjustments to the measure before setting a performance level.

DOL agrees that payment accuracy is essential and tracks UI underpayments and denied payments through its Benefits Accuracy Measurement (BAM) quality control program. In addition, the integrity of wage reporting and proper tax payments is of great concern to DOL. Consequently, SWA employer audits are subject to review through TPS.

***Appeals Measures.*** The proposal of a new timeliness Core Measure for Lower and Higher Authority Appeals was met with mixed reactions from SWAs; some commented that the proposed new measure would provide a better incentive for deciding appeals promptly and others saw no benefit to the change in measurement. Some SWAs, NELP, and the AFL-CIO were concerned that the current timeliness measures would no longer be available for use in making operational decisions.

DOL Response: The new Core Measure would be a different approach to timeliness measurement; however, it is one which NELP agreed would provide information relevant

to the question of how many unresolved cases are pending in the state. Under the new measure, SWAs would review all of their unresolved appeals, adding up the number of days each has been pending. Then the total number of days would be divided by the number of unresolved cases, to yield an average case age. For example, if a state had 500 cases unresolved on the last day of this month, and 150 were five days old, 200 were 20 days old, 50 were 35 days old, and 100 were 210 days old, the sum of the number of days pending would be 750 + 4000 + 1750 + 21,000 for a total of 27,500 days.  $27,500/500 = 55$  days “average age.”

The current timeliness measures (20 CFR part 650) lack such a simple way to evaluate the real condition of the pending cases in a state because as cases age, they simply fall off the end of the measurement scale (at, for example, “greater than 360 days”) and are no longer seen in the performance measurement. Under this type of measure, a state can meet all standards of timeliness even though some appeals remain pending for an inordinately long period. Under the average age measure, it is to the advantage of a state to hear appeals as quickly as possible. The current timeliness measures will continue to be reported as management information. The new appeals timeliness measures are contingent upon Office of Management and Budget (OMB) approval to collect the data.

***Reemployment Measure.*** SWAs generally commented that UI beneficiaries’ reemployment is not a function of the UI program and is beyond the control of the UI system. The AFL-CIO and NELP expressed concerns that beneficiaries would be compelled to accept work that would be unsuitable.

DOL Response: The new measure is intended to establish the effectiveness of the UI program to facilitate the reemployment of UI beneficiaries. State UI agencies perform many functions designed to help beneficiaries become reemployed, including referral to employment services, benefits rights interviews that help beneficiaries understand their responsibilities in making job search contacts, and reviews of job search activities for appropriateness and methods being used. DOL feels that as a result of these activities, beneficiaries become reemployed more quickly than they would without such assistance. Further, because benefits rights are preserved in law, this measure will in no way diminish those rights by compelling beneficiaries to accept unsuitable work.

Acceptable performance levels will be deferred until data have been collected from all SWAs for four quarters. The measure is contingent upon OMB approval to collect the data, which includes a solicitation for public comment in the Federal Register. The comments received in response to UIPL No. 21-04 will be combined with the comments received in response to the Federal Register solicitation. All comments will be considered.

## 5. **Revised UI Performs Measures and Criteria.**

### ***Measures.***

The streamlined UI Performs will include two measurement categories: 1) Core Measures and 2) Management Information Measures. The Tier I and Tier II nomenclature will no longer be used.

- **Core Measures** are the 11 measures that replace the 19 Tier I measures. These measures are indicators of how well SWAs perform critical activities. Core Measures are comparable among SWAs and will be assigned ALP criteria. SWAs are expected to submit CAPs when their performance falls below acceptable levels. The Core Measures and performance criteria are:

<i><b>Tax Measures</b></i>	<i><b>Acceptable Levels of Performance</b></i>
➤ New Employer Status Determinations Timeliness	70 percent within 90 days of quarter ending (Q/E) date.
➤ Measure of Tax Quality	No more than three failures out of the 13 tax functions reviewed under TPS in a year nor any single function failing the TPS review for three consecutive years.

<i><b>Benefits Measures</b></i>	<i><b>Acceptable Levels of Performance</b></i>
➤ First Payment Promptness	87 percent of all first payments made within 14/21 days (14 days if a waiting week is required and 21 days if no waiting week is required) after the compensable week.
➤ Nonmonetary Determination Time Lapse	Issue detection date will continue to be the beginning parameter for timeliness for the next year while DOL evaluates the causes of errors in detection date reporting. If detection date reporting can be improved to pass measures of data validity, it will be retained.
➤ Nonmonetary Determination Quality: Nonseparation Issues	75 percent of nonseparation determinations sampled will meet quality standards.
➤ Nonmonetary Determination Quality: Separation Issues	75 percent of separation determinations sampled will meet quality standards.
➤ Detection of Overpayments	Percent of detectable/recoverable overpayments established for recovery. ALP will be set after a review of the data over one year.

<i><b>Appeals Measures</b></i>	<i><b>Acceptable Levels of Performance</b></i>
➤ Average Age of Pending Lower Authority Appeals (Contingent upon OMB approval to collect the data)	ALP deferred until state performance using the new parameters has been recorded for four quarters.

- |  |   |
|--|---|
| ➤ Average Age of Pending Higher Authority Appeals (Contingent upon OMB approval to collect the data) | ALP deferred until state performance using the new parameters has been recorded for four quarters.    |
| ➤ Lower Authority Appeals Quality  | 80 percent of lower authority appeals have quality scores of at least 85 percent of potential points. |

<i>Reemployment Measure</i>	<i>Acceptable Levels of Performance</i>
-----------------------------	---

- |  |  |
|--|--|
| ➤ Facilitate Reemployment (Contingent upon OMB approval to collect the data) | Percent of UI claimants who are reemployed within the quarter following their first UI payment. ALP deferred until data have been collected from all SWAs for four quarters. |
|--|--|

- Management Information Measures** consist of currently collected performance data that provide additional insight into UI program operations. Some Management Information Measures are subsets or components of data included in Core Measures, such as timeliness of UCX benefit payments, those claiming benefits on an interstate basis, or the individual TPS components of the tax quality measure. These data alert state and Federal managers to performance issues that could result in lower performance on Core Measure goals and are useful for performance analysis. DOL will continue to collect all of the Management Information with the exception of the TPS “turnover ratio” measure, which will be discontinued because the information is being captured in another report.

No performance criteria are assigned to Management Information Measures. However, several measures’ criteria are currently in regulation and will remain in effect until the regulation is replaced. Descriptions of the Management Information Measures can be reviewed in Handbook 401, 3<sup>rd</sup> Edition, Change 9. The Management Information Measures are listed in **Attachment B**.

**Regulations.** Secretary’s Standards for benefit payment promptness and lower authority appeals promptness are found in 20 CFR Parts 640 and 650, respectively. Changes to the regulations will be proposed to reflect the measures and criteria noted above for first payment promptness and average age of pending appeals. Until the regulations are changed, the current measures and criteria will remain in force. Failure to meet criteria established in regulation will require corrective action.

**Program Reviews and Reporting Requirements.** SWAs perform a variety of reviews and submit required reports as part of the overall performance management system. For example, SWAs conduct tripartite reviews for nonmonetary determination quality and

reviews of lower authority appeals quality. They also conduct Benefits Accuracy Measurement (BAM) investigations and meet the requirements for reviews under the Data Validation program and TPS. They administer Benefit Payment Control programs and Internal Security programs. SWAs will address failure to administer these programs in the SQSP narrative rather than in CAPs.

6. **Administering UI Performs.** The SQSP, which each state negotiates annually with the Federal partner, will continue to be central to the administration of UI Performs. The SQSP will include narratives and CAPs.

- **Narratives.** Unlike the current SQSP format that requires a “Summary” narrative and “Focus” narratives, SWAs will describe in a single narrative:
  - State performance in comparison to the Government Performance Results Act (GPRA) goals;
  - Results of customer satisfaction surveys (optional);
  - Actions planned to correct deficiencies regarding program reviews and reporting requirements described in Section 5.

SWAs will no longer be required to address environmental factors, such as economic conditions, political climate, labor/business relationships, or state legislative issues in the SQSP. They may continue to provide this information to the degree they consider it important to explain performance and CAPs.

- **CAPs.** SWAs will be expected to submit CAPs as a part of the SQSP when their annual performance on Core Measures does not meet the ALPs. No CAPs will be required based on Management Information Measures. However, if a state’s performance in one or more Management Information Measures is so conspicuously poor that a state’s compliance with Federal law requirements is in question, DOL would require corrective action. SWAs will provide quarterly updates for each CAP. DOL will strive to attain uniform administration of CAP requirements among the SWAs and regions.
- **Continuous Improvement Plans (CIPs).** Under the current UI Performs structure, SWAs prepare CIPs to improve Tier II performance or Tier I performance that is above the established criteria. However, CIPs proved to be administratively burdensome without demonstrating improved performance. Therefore, SWAs will no longer be asked to develop CIPs under UI Performs.

7. **Publishing Data.** Three categories of performance data will be published each year:

- The GPRA goals and national aggregate data;
- Core Measures with state-specific data;
- Management Information will be published in a format that does not compare SWAs’ performance.

8. **Effective Dates for Implementing Changes.** DOL will begin implementing the changes in UI Performs with the SQSP for FY 2006 that SWAs will prepare during the summer of 2005. UI Performs will use data from the Performance Year that extends from April 1, 2004, to March 31, 2005, for the FY 2006 SQSP with the exception of TPS,

which will use data from the calendar year ending December 31, 2004. As previously mentioned, for the FY 2006 SQSP, CAPs will not be required for failure to meet the ALPs for the first payment aggregate measure and the Tax Quality measure. CAPs will be expected for failure to meet the ALPs for these measures in subsequent years. Implementation of the measures for which data are not currently available will be phased in upon approval from OMB to collect the data, the measures are finalized and the requisite programming is completed.

9. **Action**. Distribute this document to all appropriate SWA staff.
10. **Inquiries**. Direct inquiries to your regional office.
11. **Attachments**. Attachment A: Comparison of Previous Tier 1 to Core Measures  
Attachment B: Management Information Measures  
Attachment C: Core Measures  
Attachment D: Comments on FRN: Proposed Changes to UI  
Performs Part 1 (Benefits) and Part 2 (Tax)